

HONG LEONG BANK BHD

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v.

MANDUCEKAP HI-TEC SDN BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR

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ROHANA YUSUF J

[ORIGINATING SUMMONS NO: D4-24-173-2007]

14 MARCH 2008

CIVIL PROCEDURE: *Interpleader summons - Preconditions to grant of relief - Whether applicant faced with two or more competing claims - Management and control of company's monies - Separate legal entity - Rules of the High Court 1980, O. 17 r. 1*

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COMPANY LAW: *Separate legal entity - Lifting veil of incorporation - Monies in company's account - Claim to - Whether could only belong to company*

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CIVIL PROCEDURE: *Interpleader summons - Costs - Liability for payment - Application unnecessary and inordinately delayed - Whether applicant to pay costs*

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CIVIL PROCEDURE: *Costs - Liability for payment - Interpleader summons - Application unnecessary and inordinately delayed - Whether applicant to pay costs*

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The applicant bank sought relief by way of interpleader summons under O. 17 r. 1 of the Rules of the High Court 1980 ('RHC') in relation to a current account of the first claimant, one Manducekap Hi-Tec Sdn Bhd ('Manducekap'), on the grounds that the applicant was faced with the following issues: (i) there were competing claims on the management and control of monies of Manducekap's account; and (ii) there were threats of litigation and the real threat of being sued because the applicant received threats from both the second claimant, the present Board of Directors ('BOD') of Manducekap, and the third claimant, the former members of the BOD.

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Held (dismissing the application):

(1) From the facts, Manducekap was a company incorporated having its own legal entity, and it was clear that the monies in Manducekap's account could only belong to the company as no shareholder or BOD had any claim to such monies. It

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- A was obvious thus that there could not be any competing claim on the company's account between the shareholders or the BOD, as the owner was clearly the company. In view of the clear legal position on the ownership of the account, there could not be any competing claim by the claimants and there
- B was nothing for the applicant to extricate itself from. This application, therefore, had not met the first requirement under O. 17 r. 1 of the RHC since the applicant was not faced with two or more competing claims. Following from that, the applicant was obviously not faced with any real threat of a
- C legal suit to justify interpleader relief. (paras 11 & 12)
- (2) In principle, no costs should be ordered against an applicant in an interpleader summons. However, since the present application was unnecessary and inordinately delayed, it would
- D be appropriate that the applicant be made to pay costs. (paras 16, 17, 18 & 19)

Case(s) referred to:

Ming Holdings (M) Sdn Bhd v. Yusof Latif Holdings (M) Sdn Bhd [2006] 3 CLJ 72 CA (**fol**)

- E *Peter Yip Shou Shan v. George Kent (Malaysia) Bhd & Anor* [2002] 2 CLJ 205 FC (**fol**)

RHB v. Comax Sdn Bhd & Anor [1999] 3 CLJ 552 HC (**dist**)

RHB Bank Berhad v. Amalan Tepat [2007] 7 CLJ 379 HC (**dist**)

Tong Lee Co Pte Ltd v. Khiow Meng & Anor 285 MD2 Appeal No 28 of 1992 (**refd**)

- F *Watson v. Park Royal Caterers Ltd* [1961] 2 All ER 146 (**refd**)
Watson v. Park Royal (Caterers) Ltd [1961] 2 All ER 346 (**fol**)

Legislation referred to:

Rules of High Court 1980, O. 17 rr. 1(a), (b), 3(3), 8

- G *For the applicant/interpleader - Kevin Chung Li Kien (James CH Chew with him); M/s SN Yap & Assoc*
For the 1st and 2nd claimants - S Sumathi (R Rajaseelan & S Kanaga Sundran with him); M/s Sumathi, Shanmugam Divakaran Nair & Co
For the 3rd claimant - S Ravindran; M/s Sivananthan & Co
- H *For the 4th claimant - Ragumaren; M/s Ragumaren & Co*

Reported by Suresh Nathan

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JUDGMENT

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Rohana Yusuf J:

The Application

[1] The applicant, Hong Leong Bank Berhad (the bank) by way of interpleader summons is seeking relief in relation to the Current Account No. 0320002677-1 of Manducekap Hi-Tec Sdn. Bhd (Manducekap) cited as the first claimant. The other claimants cited are the present Board of Directors (BOD) of Manducekap (the second claimant), the former members of BOD (the third claimant) and the shareholders of Manducekap (the fourth claimant). Essentially, the bank is seeking for the court's direction regarding the management and handling of the said first claimant's account in relation to various court orders *viz*; the *ex parte* order dated 23 November 2006, another order dated 5 January 2007 issued under suit No. MT3-22-1495-2006 (the Shah Alam suit) and an *ex parte* order of the Kuala Lumpur High Court dated 15 May 2007 in suit No. D4-22-1503-2006 (the KL High Court suit).

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Factual Background

[2] The *ex parte* order dated 23 November 2007 issued by the High Court of Shah Alam was set aside by the 5 January 2007 order of the same court which, *inter alia* resulted in the authority to operate the account of Manducekap to be in the hands of the third claimant. Upon being served with the order, the bank took step to freeze the first claimant's account. Search of Companies Commission of Malaysia's (CCM) record on 17 November 2006 showed that the lawful Board of Directors (BOD) of Manducekap was then the third claimant. Based on that, the bank allowed the third claimant to operate the account. The second claimant raised queries and wrote to the bank (in exh. A7 in encl. 2) threatening legal action.

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[3] On 22 May 2007, the fourth claimant served on the bank an *ex parte* order of the KL High Court suit dated 15 May 2007 to restrain the third claimant from controlling or managing the account and the second claimant was given control as a lawful BOD. On 23 May 2007, CCM's record showed that the second claimant was the lawful BOD.

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- A [4] The bank on 30 May 2007 took this interpleader summons seeking clarifications on the above court orders in relation to the management and operation of the account of the first claimant.
- B [5] On 26 June 2007 a consent order was entered with the CCM under the KL High Court suit, where it was recorded that the second claimant was agreed to, by the parties to be the lawful BOD. On 22 October 2007 the first and second claimants recorded a consent order recognizing the second claimant as the lawful BOD and thereby validated the Company's Extra-Ordinary
- C General Meeting (EGM) of 18 October 2006.

The Application

- D [6] This interpleader summons is made under O. 17 r. 1 of the Rules of High Court 1980 (RHC) on the grounds that the bank is faced with the following issues:

- a) that there are competing claims on the management of the account and control of monies in the account of Manducekap and
- E b) that there are threats of litigation and real threat of being sued because the applicant received threats from both the second and the third claimants.

- F It was further submitted that this application is *bona fide* because the bank is aware of the ongoing disputes in the Shah Alam High Court and the Kuala Lumpur High Court on the composition of the BOD of Manducekap which relates to the EGM of 18 October 2006. The applicant also contended that it has complied with the requirement of O. 17 r. 3(3) of the RHC in
- G that:

- a) The bank does not have interest in the monies in the account;
- b) The bank is not in collusion with any of the parties; and
- H c) The bank is willing and able to surrender control and management of the monies or account to court or any order of the court.

Interpleader Summons

- I [7] A discretionary relief by way of interpleader proceeding has its objective of providing a relief or to extricate or disentangle an applicant from the embarrassment of being sued, or likely to be

sued by more than one party in respect of the same subject matter. The above object of an interpleader summons is explained in the Singapore High Court case of *Tong Lee Co. Pte Ltd v. Khiow Meng & Anor* 285 MD2 Appeal No 28 of 1992. The true nature and effect of an interpleader summons made under O. 17 r. 1 in its strictest sense is not a proceeding against any person. Thus, any person under the liability as mentioned under O. 17 r. 1(a) or (b) may apply for relief by way of an interpleader summons.

[8] Before a relief can be sought under O. 17 r. 1 it is essential that the applicant must be genuinely faced with a potential suit by one or more persons. Thus there must be in existence a real conflict between claimants. A mere anticipation of a legal suit would not suffice. (see *Watson v. Park Royal Caterers Ltd* [1961] 2 All ER 146.)

[9] In *RHB Bank Berhad v. Amalan Tepat* [2007] 7 CLJ 379, an interpleader summons was taken by the RHB Bank seeking the determination of the court on whether the balance of housing loan of the second and the third defendant should be released to the developer based on an irrevocable undertaking by the defendants. The undertaking made was for the plaintiff to release the money to the developer. When the defendants terminated the sale and purchase agreement pending, the validity of which to be determined, Low Hop Bing J (now JCA) made a determination sought by the RHB Bank by interpleader summons, for the balance of the loan to be released to the developer based on the said undertaking. The application of RHB bank for relief by way of an interpleader summons was allowed because it was commenced by reason of inability by the bank to resolve dispute.

[10] In *RHB v. Comax Sdn Bhd & Anor* [1999] 3 CLJ 552 an interpleader summons taken out by the bank was not allowed on the ground *inter alia* that there was no real foundation for expectation of being sued by at least two or more persons, when it was found that the second defendant in that case has no basis of claim as opposed to the first defendant.

[11] From the facts of the present case, Manducekap is a company incorporated having its own legal entity. In the Court of Appeal decision in *Ming Holdings (M) Sdn Bhd v. Yusof Latif Holdings (M) Sdn Bhd* [2006] 3 CLJ 72 it was held that:

- A It was trite that a company is a separate individual from its shareholders and directors and the property of the company belongs to the company, not to the shareholders or directors.
- B It is clear for this case authority that the monies in the account of Manducekap can only belong to the company as no shareholder or BOD has any claim to such monies. It is obvious therefore that there cannot be any competing claim on the account of the company between share holders or BOD, as the owner is clearly the company. In view of the clear legal position on the ownership of the account there cannot be any competing claim by the claimants and there is nothing for the applicant to extricate itself from. This application therefore, has not met the first requirement under O. 17 r. 1 of the RHC since the applicant is not faced with two or more competing claims.
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- D [12] Following from that, obviously the applicant was not faced with any real threat of a legal suit to justify an interpleader relief. The purported legal threat in letters from the second claimant in exh. A7 and the third claimant in exh. A6 of encl. 2 cannot be construed as threats of legal suit. As decided in the case of *RHB v. Comax Sdn. Bhd.* [1999] 3 CLJ 552 the expectation to be sued must be based on some real foundation. A mere anticipation of a suit and a claim which clearly has no legal basis, as in this case, cannot be said to be a real threat.
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- F [13] Not only that the legal position of the account clearly belongs to the first claimant in the present case, there are also in existence court orders that determine the rightful authority to operate and manage the account. In the face of the *ex parte* order of 15 May 2007, there is no reason why the applicant should be facing with any difficulty on the authority to operate the account of Manducekap. Furthermore, the third claimant has been restrained by the KL High Court order dated 15 May 2007 *vide* suit No. D4-22-1503-2006 and the fourth claimant by encl. 6 also admitted that the monies in the account belong to the company.
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- H The only party authorized to operate the account is the second claimant.
- I [14] The alleged ambiguity raised by the learned counsel for the applicant on the 15 May 2007 order of the court relates to the para. 5, which states:

That the **purported directors and/or their agent/servants** do forthwith hand over all assets of the first defendant including but not limited to vehicles, to the Lawful Board. (emphasis added)

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The applicant contended that the above paragraph of the order is unclear as to whether it refers to the applicant bank because the bank is an agent of the company but not an agent of the BOD. Such ambiguity (if any) does not qualify the pre-requisite of an application by way of Interpleader summons and are not situations envisaged under O. 17 r. 1. The applicant could have sought clarification on the order instead of obtaining relief by way of Interpleader summons because it is not faced by or caught between two or more threat to legal suit. Thus even assuming that it is true that the order is ambiguous, an application under O. 17 r. 1 would not be appropriate to determine the alleged ambiguity.

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[15] It is apparently clear that this application has been inappropriately taken by its failure to satisfy the strict requirement of O. 17 r. 1. Apart from that, it has failed to state each of the claimants' purported rights. This application should not be allowed.

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Costs

[16] In principle, no costs should be ordered against an applicant in an interpleader summons. This is because, as stated earlier the true nature and effect of an Interpleader summons under O. 17 r. 1 is not a proceeding against any person. In *RHB v. Comax Sdn. Bhd*, the High Court made no order to costs though the application was dismissed. In *RHB Bank Berhad v. Amalan Tepat* the High Court did not make order as to costs because the application was commenced by reason of the applicant's disability to resolve the disputes.

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[17] Unlike the above cases, firstly, I find that the present application is in the first place unnecessary as there is no competing claims or threat to a legal suit faced by the applicant. Secondly, the applicant having filed this application before consent orders were obtained with CCM, has been given a chance by all parties who appeared in court on the 3 July 2007 to withdraw the application but had refused to do so and proceeded with this unnecessary application. Unnecessary or inappropriate application should render the applicant liable to costs. In *Peter Yip Shou Shan v. George Kent (Malaysia) Bhd & Anor* [2002] 2 CLJ 205, Abdul

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- A Aziz Mohamad J (now FCJ) held that the costs in an interpleader summons should instead be paid by the claimant who fails the claim and such claimant should also pay costs for the successful claimant. His lordship held in that case that, if the Senior Assistant Registrar (SAR) had found the application not to have been properly brought the proper order to make would be to dismiss the application and make the applicant pay costs.

- C [18] Thirdly, there has also been inordinate delay by the applicant in making this application when the applicant has frozen the account on 11 January 2007 and only after four months filed this application on 30 May 2007. A delay of four months to take up this summons Interpleader shows that the applicant has not acted with reasonable promptitude. In the English case of *Watson v. Park Royal (Caterers) Ltd* [1961] 2 All ER 346, the court ordered costs to be paid by the applicant who delayed the application when it could have interpleaded at an earlier stage, instead.

- E [19] In view of the conduct of the applicant herein and guided by the above decisions on the issue of costs, in my view it would be appropriate that the applicant be made to pay costs. Thus for all these reasons I hereby dismiss the application in enclosure 1 with costs to be paid to the first, second and fourth claimant, the costs of which is to be taxed. No order to costs is made to the third claimant who is in support of this application.

F **Further Order**

- G [20] At the request of the applicant, I hereby made a further order under O. 17 r. 8, for the applicant to issue a bankers' cheque in the full amount of the said account in favour of Manducekap, the first claimant to be delivered to the solicitor for the first claimant, within four days from the date of this order.

[The application dismissed with costs.]

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